defines "access software" as a non-common carrier function because Congress "recognize[d] the critical importance of access software in making the Internet accessible to Americans who are not computer experts."[28] Internet telephone software is "access software" because it does "not create or provide the content of the communications but [allows] a user to" among other things, "transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content."[29] Additionally, the vast majority of IVVS applications to date, well in excess of 85%, are in internal corporate "intranets." Even if Internet telephony software could be considered a telecommunications service, it is thus predominantly *private* carriage, not a common carrier function subject to Commission jurisdiction.

ACTA has not and cannot allege that Respondents carry any interstate phone calls. Netscape's, Voxware's and InSoft's software offers voice communications functionalities, and like Respondents neither Netscape, Voxware nor InSoft carries or resells any telecommunications services or enhanced services. If any entity is a "carrier" for Internet voice communications, it is the ISP or other Internet access provider, *not* the manufacturer of an Internet's user's "browser" software.[30] The common law precedents on common carriage alluded to by ACTA, Petition at 6, are simply inapplicable to Internet telephone software manufacturers. The "*sine qua non* of common carrier status is a quasi-public character, which arises out of an undertaking 'to carry for all people

---

[28] Conference Report at 191.

[29] 47 U.S.C. § 223(h)(3).

[30] *See* Section I(B) for a discussion of why it is not technically possible to identify a single "carrier" for Internet telephone communications.

indifferently.'"[31] That Internet IVVS software providers advertise the ability of customers to use their software to make telephone calls via the Internet, *id.*, does not constitute the public "holding out" of telecommunications *service* which is the essential hallmark of common carriage.

ACTA's attempt to stretch the 1996 Act and common law to cover Internet telephone software providers is revealing. It illuminates the fact that the Internet is a unique medium, a "network of networks" that cannot be shoe-horned into traditional regulatory classifications, especially as the capabilities of the Internet expand to include real-time voice and video communications. ACTA's reseller members may not like the result, but the Commission's jurisdiction does not extend to providers of Internet-related computer software.[32]

B. The FCC Has No Authority to Define "Permissible Uses" of the Internet

ACTA's request that the Commission initiate a rulemaking to establish rules governing Internet communications and "define permissible communications" on the Internet, Petition at 5, 11, also seeks relief that is beyond the Commission's jurisdiction. There is nothing in the Communications Act, and certainly no charter under an "ancillary jurisdiction" rationale, for the FCC to limit or constrain the types of communications services that may be delivered over the Internet.

---

[31] *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976)(citation omitted).

[32] Even if its case on the merits had any validity, ACTA's request for the "special relief" of an Order directing cessation in the sale or distribution of Internet phone software does not meet the stringent requirements applicable to grant by the Commission of preliminary injunctive relief. ACTA has shown no "irreparable injury," let alone any direct, present injury to its members, from the sale of Internet telephony software.

The Commission enjoys general Title I jurisdiction over all "communications by wire or radio." 47 U.S.C. § 151. On the other hand, the balance of the Communications Act, as amended by the 1996 Act, provides no express authority for Commission regulation of enhanced services or explicit jurisdiction over the Internet. Indeed, under Section 223(e)(6) of the 1996 Act the Internet is an "interactive computer service," expressly excluded from common carrier Title II regulation.[33] The Conference Committee report emphasizes in this regard that the Commission's power to define "Communications Decency Act" screening requirements for ISPs and other providers of interactive computer services[34] "grants no further authority to the Commission over interactive computer services and should be narrowly construed "[35] Hence, although digital "convergence" is moving the communications and computer industries toward a market in which both basic telecommunications carriers and enhanced, interactive computer service providers will offer a similar spectrum of voice, video and data services, and perhaps eventually with similar technologies, current law—and good policy—still differentiates the two.

The absence of express jurisdiction over the Internet and the limited Commission role set forth in the CDA for "defining" obligations of interactive computer services providers together demonstrate that the FCC cannot decide in the first instance on the

---

[33] "Nothing in this section shall be construed to treat interactive computer services as common carriers or telecommunications carriers." 47 U.S.C. § 223(e)(6).

[34] Section 223(e)(6) by its terms applies only as a defense to charges that a provider of interactive computer services has violated the Communications Decency Act provisions of the 1996 Act. Nonetheless, it is instructive of a broad congressional policy to limit the Commission's authority with respect to the rapidly changing information services market.

[35] Conference Report at 191.

"permissible uses" of the Internet.[36] It goes almost without saying that the Commission has no power to regulate any communications service according to its underlying technology, at least in the absence of harmful interference or health and safety considerations. The Commission's power is over communications services, not technologies. Therefore, the FCC has no more authority to define permissible uses of the Internet than it has to decree what sorts of services can be offered by cellular, fiber optic, or twisted-pair network technologies.[37]

Even in areas where the Commission has the power to dictate usage requirements, as in its spectrum assignment and allocation responsibilities, its more recent, procompetitive policy (PCS, LMDS, etc.) has been to license providers to use spectrum for any purpose meeting the needs of customers. The market, the Internet community and computer users themselves should decide on appropriate uses of the Internet, not an administrative agency. Any other approach would have the FCC interfere in the market-driven process of technological innovation and impermissibly favor one or more communications technologies over others.[38]

Whatever "ancillary jurisdiction" the Commission enjoys over the Internet under *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968), does not extend to the relief ACTA demands. *See* Petition at 7-8. While *Southwestern Cable* has not been overruled,

---

[36] That the Commission has jurisdiction over "telecommunications services" provided on the Internet does not, of course, mean that it has the power to decide what sorts of services may or may not be offered over the Internet or by ISPs.

[37] ACTA's rhetorical claim that Internet telephony is a "misuse" of the Internet, Petition at 5, is just a hollow pejorative.

[38] For instance, since there currently are international communications standards for the transmission of video services over telephone networks (*e.g.*, ITU H.234), it makes no policy sense for the Commission to prohibit or restrict the offering of comparable services via the Internet.

that case represents the low-water mark of FCC protectionism, and its underlying policies are held in wide disrepute. Simply put, the FCC in the early 1960s exercised "ancillary jurisdiction" over cable television in a vain attempt to stem technological change and "protect" broadcast television. The result was to stifle and delay cable TV's development as a modern communications medium for almost two decades, since the Commission's "principal objective was to suppress the cable industry by preventing direct competition between cable and over-the-air broadcasting."[39] ACTA's overt attempt to have the Commission do to the Internet what it once did to cable television represents the worst possible application of regulatory power and a blatantly anticompetitive proposal. Cartel management may have been the Commission's "ancillary jurisdiction" policy in the 1960s and 1970s, *see also MCI Telecommunications Corp. v. FCC*, 561 F.2d 365 (D.C. Cir. 1977)(*"Execunet I"*), 580 F.2d 590 (D.C. Cir. 1978)(*"Execunet II"*), but it is surely not the Commission's policy today.[40]

C. FCC Regulation of Internet Telephony and IVVS Would be Poor Public Policy

Whether or not the Commission has jurisdiction over Internet communications generally, the forbearance approach recommended by Netscape, Voxware and InSoft in Section I is the only proper way to deal with ACTA's Petition. Stripped of its "public interest" rhetoric, the Petition's sole claim is that Internet voice communications divert

---

[39] M. Kellog, J. Thorne and P. Huber, *Federal Telecommunications Law*, § 14.1 at 689 (1992). In passing the 1984 Cable Act, Congress concurred that "FCC policies in the 1960s and early 1970s unfairly inhibited the growth and development of cable." H. Rep. No. 98-384, 98th Cong., 2d Sess. 22 (1984).

[40] Ancillary jurisdiction is a particularly thin reed on which to base common carrier regulation. In *FCC v. Midwest Video Corp.*, 406 U.S. 689 (1979), the Supreme Court struck down the Commission's cable access rules. "The Commission may not regulate cable systems as common carriers, just as it may not impose such obligations on broadcasters. We think authority . . must come specifically from Congress."
(Footnote continued on next page)

potential revenues from ACTA's reseller members. Using the regulatory process as ACTA requests—to raise rivals' costs and prevent competition from offering consumer choices in communications services—is plainly unjustifiable.

ACTA alleges that Internet telephony is a "threat" to the "viability" of its members. Petition at 3. That is correct and irrelevant.[41] Competition enhances and advances consumer welfare even if individual carriers, or an entire class of service providers, are driven out of business. Switched long distance carriers can respond competitively to the development of Internet telephony, or provide their own Internet-based services, or ignore the fundamental technological changes now transforming their industry.[42] The choice is up to them; the resellers' business future rests in their own hands. Adding misplaced terminology of "bypass" does nothing to help ACTA's case.[43] The significance of bypass in communications regulation is the avoidance of "uneconomic bypass" caused by regulatory-mandated pricing structures (rather than the underlying economics of competing services), not in migration of customers to lower-priced competitors.

Id. at 708-09. Although the 1984 Cable Act granted the Commission express Title VI jurisdiction over cable systems, the Commission has no comparable authority over the Internet.

[41] Current Internet telephony volumes are unlikely to present any economic threat to small or large long distance carriers. In the longer run—which can sometimes be measured in months on the rapidly changing Internet—Internet telephony will definitely be a threat to circuit-switched telephone networks. How near that day is, and how large the threat will be, are questions of debate and for market forecasters, but are not material to the Commission's decision on whether to regulate Internet telephony services.

[42] Barriers to entry into the ISP business are extremely low, and ACTA members need only overcome their lack of market foresight and business risk-aversion in order to meeting the challenge posed by Internet telephony head-on.

[43] ACTA characterizes Internet telephony as "a way to bypass the traditional means of obtaining long distance service." Petition at 5.

Competition is perfectly appropriate as a public policy matter even if some market participants choose to give away their products, which is not at all unusual in the communications industry. In many "traditional" communications markets, such as cellular mobile radio, providers directly or indirectly offer free service (or subsidized equipment) as a promotional effort to gain market share and increase subscribership. Indeed, in the long distance industry it has been very common for larger carriers such as AT&T to offer a month's free service, or $50 or more, to induce subscribers to switch their "traditional" carrier. Thus, even if ACTA were correct that long distance service is being "given away" for no charge via Internet telephony, Petition at 3, 11, it would not matter a bit.

The fact of the matter, however, is that consumers do incur costs to engage in Internet telephony and IVVS services, including hardware expenses (computers, modems, microphones), software expenses (Internet client software) and online service expenses (ISP and OSP charges). That ACTA believes these implicit "prices" are too low is once again immaterial.[44] Internet IVVS offers computer users a broad array of real-time voice and video applications, of which Internet telephony is one piece. The benefits of integrated desktop communications extend well beyond lower prices for long distance telephone calls. But even if IVVS were only about "cheap phone calls," it is

[44] ACTA's March 4, 1996 press release complained that the "average" price of an Internet phone call is 3.3 cents per minute, while "[t]he average residential long distance telephone call costs about 22 cents per minute or seven times as much." ACTA's mathematics are seriously flawed, in that it assumes 100% of an Internet user's online time is spent making telephone calls, but even so this comparison is ridiculous. The incremental cost of long distance services is virtually zero. That ACTA's members operate in a market environment presently offering arbitrage opportunities does not mean that the Commission must protect resale carriers against economic risks.

precisely the type of facilities-based telecommunications competition the Commission should foster, not impede with unnecessary regulatory burdens.

Introducing government regulation as the "governor" of technical development is completely inconsistent with the procompetitive, deregulatory polices established by the Telecommunications Act of 1996. The 1996 Act breaks down regulatory and judicial cross-industry barriers in favor of "intermodal" competition—cable verses telephone, long distance versus local, cable against satellite, wireless against landline, etc. The Commission's objective under the Act should be to maximize competition from new technologies and to foster alternatives to "the traditional means of obtaining long distance service," Petition at 5, not to order their cessation or to define the "permissible" scope of competition from the Internet. ACTA's request is no more valid today than if Western Union had asked the ICC in the 1880s to halt the provision of long-distance telephone service by the embryonic Bell System in order to protect telegraph revenues, or if the US Postal Service had petitioned the Commission in the 1980s to ban fax transmissions as an "impermissible use" of the switched telephone network to compete with letter delivery.

Finally, ACTA's patronizing suggestion that Internet voice communications could "result in a significant reduction of the Internet's ability to handle the customary types of Internet traffic," Petition at 5, is nonsense. Internet telephony and IVVS are neither a short-run nor long-run threat to the Internet. The dynamic, decentralized, non-regulated administration of the Internet has allowed rapid and efficient increases in backbone and inter-router transport capacity, as ISPs and network providers adjust to

the geometrically increasing amount of Internet traffic.[45] There is no question that this constant need for capacity augmentation will be a very real fact of life on the Internet for years to come. Furthermore, current trends in IVVS technology, including compression/decompression technologies (CODECs), allow IVVS to be transmitted in *less Internet bandwidth than it currently takes to send a WWW page.*[46] Thus, ACTA has its facts backwards; in reality Internet telephony frees capacity for the network to transport the "customary types" of Internet traffic.

III. THE FCC SHOULD EXERCISE ITS JURISDICTION TO PREEMPT STATE REGULATION OF THE INTERNET

If Internet telephony and IVVS services are "enhanced" information services, then state public service commissions are precluded from regulating the Internet, because the *Computer II* regime preempts state regulation of enhanced services.[47] On the other hand, if Internet phone services are "telecommunications services" for purposes of the 1996 Act, then the Commission must decide where they fall under the division of regulatory power between interstate services, reserved for the FCC, and intrastate services, reserved for state PUCs.

---

[45] The phenomenal growth of the Internet has taken place largely without any of the service disruptions and network "reliability" problems that have plagued circuit-switched telephony, in spite of a rate of increase that easily transcends anything seen before in American communications. As one example, the number of WWW transactions processed on the Internet is projected to double every 6-8 weeks throughout 1996.

[46] *See* note 10 *supra* (using data compression technology hour-long voice call requires only 450K of data transfer, compared with 200-300K for a single graphics intensive World Wide Web page).

[47] *See, e.g., Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Memorandum Opinion and Order on Further Reconsideration, 88 F.C.C.2d 512, 514 ¶ 83 n.34 (1981), citing, *Computer II* at 428-29. By the same token, if Internet telephone or IVVS software is CPE, then it is classified as unregulated under *Computer II* for interstate purposes and subject to the same preemption of state authority. *National Association of Regulatory Util. Comm'rs v. F.C.C.*, 880 F.2d 422 (D.C. Cir. 1989).

Netscape, Voxware and InSoft believe that the Commission can and should implement a forbearance policy towards the Internet by preempting state regulation of Internet communications. First, the Internet is inherently an interstate medium, and Internet communications are almost always interstate. The Commission can effectively preempt state regulation in these circumstances merely by declaring that Internet communications are within its exclusive jurisdiction over interstate services. Second, and alternatively, if any Internet communications are properly classified for jurisdictional purposes as intrastate, then the Commission has the power affirmatively to preempt state regulation. Where, as on the Internet, separation of intrastate and interstate traffic is impossible, and where state regulation would conflict with federal policy, preemption of state regulation is required.

There can be no genuine question that virtually all Internet communications are interstate. The Internet is inherently interstate. It is a global medium, one that is completely distance-insensitive and almost entirely location-indifferent.[48] While this means that precise assessment of jurisdictional traffic is impracticable, it is clear to anyone experienced with the Internet that nearly every Internet "transaction" crosses state lines. In almost every instance, the host computer with which an Internet user communicates to perform an Internet application is located in another state—whether or not

[48] The Internet was developed to be flexible and decentralized in both its architecture and addressing scheme. For instance, General Electric has the Internet Class A network 3.0.0.0, which includes 16,777,216 individual IP addresses. This massive network spans state lines, but its internal layout is invisible from the outside—partly for security reasons, and partly for efficiency, because the routers outside GE just need to know that any packet with an address whose first byte is a 3 goes to GE. Thus, in effect the Internet does not know locations at all; it only knows topology, and the topology is complex. By contrast, the PSTN has a fairly simple topology; its area codes, and local exchanges, impose a hierarchical, geographic-based structure.

the user's IP connection is with an in-state computer. Even to e-mail the person next door, most Internet subscribers (unless they happen to be served by the same mail server) will transmit a message that is stored on a remote host in another state before delivery to the recipient.[49] Thus, unlike the usual model applied to circuit-switched telephony, where a call that originates and terminates in the same state is considered jurisdictionally intrastate even if transported and switched in another state, the Internet is different. Out-of-state "switching" is the rule, not the exception, on the Internet.[50]

In the switched telephone domain, the Commission has fashioned a jurisdictional classification rule for mixed-use private line and special access services, where a facility with at least ten percent interstate usage is classified as interstate for separations, regulation and tariffing purposes. *See* 47 C.F.R. § 36.154(a); *MTS and WATS Market Structure*, 4 FCC Rcd. 5660 (1989). If dedicated telecommunications circuits are interstate under this "ten percent rule," then Internet access services must be interstate as well—even though the user's "link" to the network is physically intrastate. Purely intrastate usage of the Internet is plainly *de minimis* under this standard. Consequently, the Commission should declare in this proceeding that all Internet communications and Internet access services are jurisdictionally interstate, and assert exclusive jurisdiction over the Internet.

---

[49] Even if an IP packet's source and destination are within the same state, it routinely crosses state lines to get there on the Internet. For example, nearly all domestic Internet traffic that flows from one backbone to another is exchanged at one of a handful of "peering" points; the busiest of these is MAE-East (DC). As a result, a packet going from, for instance, austin.ibm.com (Austin, TX) to io.com (also Austin, TX), may go all the way to DC and back to get across town.

[50] Because there is no circuit in an Internet communication, application of these telephony-based jurisdictional rules is difficult. For instance, in the e-mail situation, the sender and the subscriber communicate separately with the network, and a user can retrieve e-mail from any geographic location in the country. In the case of an Internet telephony application, the "calling" and "called" parties frequently communicate with an Internet server, without any direct IP connection between the users' machines

If the Commission chooses not to apply this "ten percent rule" to Internet communications, it still has the ability—and under the 1996 Act the obligation—to affirmatively preempt state regulation of the Internet. Commission preemption of state regulation over *intrastate* services is permitted when it is not feasible to separate traffic jurisdictionally and application of state regulation would conflict with federal policy. *E.g., NARUC v. FCC*, 880 F.2d 422, 429 (D.C. Cir. 1989). For the Internet, traffic separation is technically impossible, and by forbearing from regulation of Internet telephony the FCC will have adopted a policy of "non-regulation" designed to facilitate the Internet's competitive growth and development.

Identification and measurement of Internet telephony traffic is technically infeasible. As discussed in Section I(B), the Internet is not designed to track specific applications by individual users, Internet telephony applications do not use a unique data "header," and implementing a capability for detecting and metering Internet telecommunications transmissions would require extraordinary reconfiguration of all computer networks on the Internet, with incredibly onerous increases in system overhead and diminished efficiency.[51]

Moreover, even if it were practical to identify Internet voice communications among the hundreds of millions of Internet packets flowing across the network each day, separation of voice "calls" along traditional telephone jurisdictional lines is

[51] The Commission has preempted state regulation on this basis in a variety of circumstances, recognizing that where segregation of intrastate traffic is possible, if at all, only with great difficulty or on an uneconomic basis, preemption is justified. *See, e.g., Policies and Rules Concerning Interstate 900 Telecommunications Services,* 6 FCC Rcd. 6166, 6180 n.137 (1991); *Computer III Remand Proceedings,* 7 FCC Rcd. 7251, 7634 (1991)(economically impossible to create separate RBOC enhanced service marketing organizations).

definitely impossible. Unlike telephone numbers, Internet IP addresses are designed to be geographically indifferent—there is no correlation between a user's physical billing address and the location of its Internet client computer. Within the United States, Internet "domain" names (the portion of an Internet e-mail address following the "@" symbol) are entirely non-geographic. For instance, many businesses set up World Wide Web sites, using unique domain names, on host computers in different states from their business locations. Indeed, corporate and other "subdomains" can be located *anywhere in the world*, since routing of Internet messages within a domain is the responsibility of the owner of the domain. Finally, and obviously, Internet communications are entirely distance-insensitive; it is just as easy (and frequently as fast) to send data to or receive data from an Internet server located across the country as it is to interconnect with a server in the user's own city.[52]

State regulation of Internet voice and other telecommunications services offered via the Internet would directly contradict federal policy. Application of forbearance to Internet telephony would represent a Commission determination that maintenance of the Internet's non-regulated, non-governmental structure is the best means of assuring that all Americans have access to advanced information services and interactive computer services. Section 254(b)(2) of the 1996 Act, as part of the Act's new provisions on universal service, establishes the principle that access to advanced information services "should be provided in all regions of the Nation." Most significantly, the Act for the

[52] Apparent speed differences in "loading" WWW pages, for instance, are frequently due more to the speed and bandwidth of the server's Internet connection than to the user's modem speed or ISP capacity. Where a WWW site is hosted on a server with a dial-up or 56Kbps connection, data transfer will be markedly slower than if the server uses a T1 or faster connection.

first time establishes as national United States policy the imperatives to "promote the continued development of the Internet and other interactive computer services," and to "preserve the vibrant free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State regulation.*" 47 U.S.C. § 230(b)(1)-(2) (emphasis supplied).

What this means for the Commission's preemption powers is clear. Under the 1996 Act, preemption is the best means of fostering the continued development of the Internet because, as Congress found, the Internet has "flourished, to the benefit of all Americans, with a minimum of government regulation." *Id.* § 230(a)(4). In the past, the Commission has not hesitated to preempt state regulation of new, innovative and competitive services, such as nationwide paging, in order to implement its finding that a deregulated environment will best spur competition and technological innovation. *E.g., Mobile Telecommunications Technologies Corp.*, 7 FCC Rcd. 4061, 4062 (1992) (preempting in order to enforce "longstanding federal goal [of] the establishment and development of a thriving paging service that can provide coverage throughout the nation"). The Commission should do so here as well.

In fact, because Congress has now created a national policy that the Internet should be "unfettered" by all regulation, state and federal, the Commission has an obligation to preempt state regulation of the Internet in order to ensure uniform nationwide application of this congressional policy determination. The fear, uncertainty and doubt arising from the potential of state regulation of the Internet is as harmful to the continued development of this new medium as substantive state regulation. The "mitts off" approach articulated by Commissioner Chong must be applied at all levels of govern-

ment. Because ACTA has already petitioned at least one State PUC to regulate Internet telephony services,[53] the Commission should take prompt action to enforce the 1996 Act's uniform national policy precluding Internet regulation by preempting all state regulation of the Internet and Internet services.

IV. THE COMMISSION SHOULD TAKE A PROACTIVE ROLE IN PROMOTING INTERNET DEVELOPMENT AND THE INTERESTS OF THE UNITED STATES INTERNET INDUSTRY IN INTERNATIONAL COMMUNICATIONS RELATIONS

As a global medium in which United States companies are the clear market leaders, the Internet is especially susceptible to interference from restrictive and nationalistic policies of foreign governments. The continued growth and development of the Internet, and with it the robust information potential for all Americans, is potentially constrained by inhibiting foreign PTT practices, including intrusive regulation of enhanced service providers, subsidy-laden transport rates from monopoly telecom utilities, grossly inflated "accounting rates" for international telecommunications services, and antiquated rules on spectrum usage and CPE attachment. These and similar issues will affect the global evolution of the Internet, including its extension into new countries and the underlying international transport capacity of the Internet itself.

The FCC has consistently used its international role to promote U.S. communications interests and to counter anticompetitive positions of foreign monopoly PTTs. The Commission has used its influence in the World Trade Organization GATS and in

---

[53] *Provision of Intrastate Telecommunications Service Via the "Internet" by Non-Tariffed, Uncertificated Entities*, Petition for Declaratory Ruling, Institution of Rulemaking and Injunctive Relief (Florida Public Service Commission, filed March 18, 1996).

World Radiocommunication Conference negotiations, for instance to secure orbital slots and uplink frequencies for mobile satellite services (LEOs) such as Teledesic and Iridium. In the field of international voice communications, the Commission has authorized "call back" services of U.S. carriers that permit foreign subscribers to use American carriers to originate international phone calls, in competition with the much higher outbound rates charged by their domestic PTTs. And the FCC has recently used the leverage of Section 214 international service authorizations to press for international communications regulatory liberalization by application of a "reciprocity" policy that examines opportunities for United States companies to provide telecommunications services in and to other countries.

The Commission should perform a similar role for the Internet and U.S.-based Internet companies. By proactively promoting Internet development and the interests of the United States Internet industry in its international communications relations, the Commission can help assure that Congress' vision of an expanding, "flourishing" Internet is maintained both here and abroad.[54] In short, there is an important role for government in the Internet, internationally and domestically. It is not the intrusive regulatory role envisioned by ACTA, but rather the procompetitive, deregulatory role

[54] As Commissioner Ness observed during the recent House Telecommunications Subcommittee hearings, in the United States accesss to the Internet is about 1/75th the cost of Internet access in, for example, Switzerland and other countries that have yet to liberalize their telecommunications regulatory schemes.

the Commission has historically played in international communications. Netscape, Voxware and InSoft look forward to working closely with the Commission, the Commerce and State Departments and the Administration in achieving the valuable goal of promoting the Internet as a true Global Information Infrastructure.

CONCLUSION

For all the foregoing reasons, the Commission should dismiss the ACTA Petition and (1) forebear from Title II regulation of Internet telecommunications services, (2) preempt all state regulation of the Internet, and (3) promote the Internet and US-based Internet entities in the international communications regulatory environment.

Respectfully submitted,

By: _____

Roberta R. Katz
Senior Vice President, General Counsel & Secretary
Peter F. Harter
Public Policy Counsel
Netscape Communications Corp.
http://home.netscape.com/
pfh@netscape.com
487 East Middlefield Road
Mountain View, CA 94043
415.937.2728

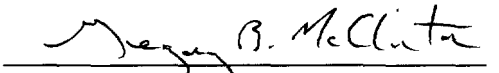
Jeffrey Blumenfeld
Glenn B. Manishin
Elise P.W. Kiely
Christine A. Mailloux
Blumenfeld & Cohen - Technology Law Group
http://www.technologylaw.com/techlaw/
info@technologylaw.com
1615 M Street, N.W.
Suite 700
Washington, DC 20036
202.955.6300

Attorneys for
Netscape Communications Corporation,
Voxware, Inc. and InSoft, Inc.

Dated: May 8, 1996

CERTIFICATE OF SERVICE

I, Gregory B. McClinton, do hereby certify on this 8th day of May, 1996, that I have served a copy of the foregoing document via first class mail, postage prepaid, to the parties below:



Gregory B. McClinton

The Honorable Reed E. Hundt*
Chairman
Federal Communications Commission
1919 M Street, N.W. - Room 814
Washington, D.C. 20554

The Honorable Rachel B. Chong*
Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 844
Washington, D.C. 20554

The Honorable Susan Ness*
Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 832
Washington, D.C. 20554

The Honorable James H. Quello*
Commissioner
Federal Communications Commission
1919 M Street, N.W. - Room 802
Washington, D.C. 20554

Mark Corbitt*
Telecommunications Policy Analyst
Federal Communications Commission
1919 M Street, N.W. - Room 822
Washington, D.C. 20554

Regina M. Keeney*
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W. - Room 500
Washington, D.C. 20554

Robert Pepper*
Chief, Office of Plans and Policy
Federal Communications Commission
1919 M St., N.W. - Room 822
Washington, D.C. 20554

Kevin Werbach*
Attorney - Policy and Program Planning
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W. - Room 544
Washington, D.C. 20554

William Kennard*
General Counsel
Federal Communications Commission
1919 M Street, N.W. - Room 614
Washington, D.C. 20554

Kathy Levitz*
Deputy Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W. - Room 500
Washington, D.C. 20554

---

* Indicates service by hand delivery

Charles H. Helein
General Counsel
Helein & Associates, P.C.
8180 Greensboro Dr. Suite 700
McLean, VA 22101

Wanda Harris*
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W. - Room 518
Washington, D.C. 20554